Supreme Court, U.S.
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No. 91-1250

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

RICHARD J. McALLAN,

Petitioner,

-against-

JAMES T. KERR, et al.,

Respondents.

(Full Caption Infra)

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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February 26, 1992

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COUNTERSTATEMENT OF QUESTION PRESENTED

Whether the lower Courts properly determined that one or more of petitioner's claims in his amended complaint were barred by collateral estoppel, and that those claims which were not barred involved actions that resulted in no legally cognizable injury, no actual adverse employment action, and no concrete negative effect upon petitioner's employment status.

PARTIES:

No. 91-1250

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

RICHARD J. McALLAN,

Petitioner,

-against-

JAMES T. KERR, individually and as Executive Director, Emergency Medical Service, New York City Health and Hospitals Corporation, CARLOTTA BRANTLEY, individually and as Former Vice President for Corporate Affairs, New York City Health and Hospitals Corporation, STANLEY BREZENOFF, individually and as Former President of the New York City Health and Hospitals Corporation, and also as Deputy Mayor of the City of New York, ALEXANDER KUEHL, M.D., as Vice President of Emergency Medical Service, New York City Health and Hospitals Corporation, WILLIAM LEASK, individually and as Labor Relations Director, Emergency Medical Service, New York City Health and Hospitals Corporation, ROBERT BECKER, individually and as Chief of the Emergency Medical Service, New York City Health and Hospitals Corporation, JOHN McLAUGHLIN, individually and as Former President of the New York City Health and Hospitals Corporation, JO IVEY BOUFFORD, M.D., as President of the New York City Health and Hospitals Corporation, THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION, JUAN ORTIZ, individually

and as Former Personnel Director of the City of New York, VICTOR BOTNICK, and as Former Special Assistant to the Mayor of the City of New York and as former Chairman of the New York Health and Hospitals Corporation, THE CITY OF NEW YORK, and all other as yet unidentified agents of the City of New York who have acted in violation of the rights of the Plaintiffs herein,

Respondents.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

COUNTERSTATEMENT OF THE CASE

Petitioner Richard J. McAllan has been employed, and continues to be employed, by the Emergency Medical Service ("EMS") of the New York City Health and Hospitals Corporation ("HHC") since 1973. Beginning in 1980, and continuing to the present, he

has made numerous public statements critical of EMS and HHC, concerning, among other things, HHC's various labor policies, and what he has perceived as safety problems with EMS's ambulances. He also brought a number of Improper Practice Petitions alleging HHC violations of labor-management practices to the City's Office of Collective Bargaining ("OCB") during the early 1980s, and in late 1983, he filed a state lawsuit challenging EMS's employment examination practices and later, its job-title structure.

In 1981, McAllan was charged with misconduct concerning an incident at Lincoln Hospital, and a reprimand was recommended at the Informal Conference held on that charge. Instead of grieving that determination, he filed an Improper Practice Petition with OCB over the incident. Although four days of hearings were held on the petition (which was amended in 1983),

McAllan did not permit OCB to come to any decision on it. In 1985, after filing this federal action, he persuaded OCB to stay further proceedings on that petition, and also on three others that he had filed over incidents he also raises in this federal lawsuit. Thus, he has not suffered any adverse outcome from the OCB proceedings on these incidents. In fact, in 1983, McAllan successfully took the promotional examination for the next job title in his career ladder, and was offered the promotion to the title of Supervising Emergency Medical Service Specialist when the resulting eligible list was issued in 1984. McAllan declined the promotion in July, 1984, however, stating in his letter that he could not accept it while he was in litigation with HHC.

In January 1983, McAllan was issued a Notice of Violation for having given improper signals to the EMS dispatcher. He was

"counseled" about this misconduct, and a notice of counseling was placed in his personnel file, along with his written rebuttal comments.

In mid-1982, McAllan was charged with an unauthorized response to a signal of another agency. The charge arose from an incident on May 23, 1982, in which McAllan improperly responded to a police radio signal without authorization from the EMS dispatcher, and became involved in an accident with the ambulance he was driving. After an informal conference in September, 1982, HHC served formal disciplinary charges in February 1983, and a full evidentiary hearing was held on May 10, 24, and July 10, 1983. The Hearing Officer determined on August 15, 1983 that McAllan was guilty of making an unauthorized response to the signal of another agency, but was not guilty of the charge of filing a

false report about the associated accident. The Hearing Officer recommended a 15-day suspension without pay, which EMS Director James Kerr accepted by letter dated August 26, 1983. In so recommending, the Hearing Officer noted several past pre-disciplinary "counselings" on similar offenses that were in McAllan's personnel file, and balanced them against several commendations. The prior counselings the Hearing Officer listed did not include either the 1983 notice for giving improper signals, or the reprimand for the Lincoln Hospital incident, neither of which had any relevance to the misconduct at issue or to its penalty.

Thereafter, in a pro se State court proceeding captioned McAllan v. Brezenoff, et al., brought pursuant to Article 78 of the New York Civil Practice Law and Rules ("CPLR") in New York County Supreme Court in December, 1983, McAllan sought to

set aside the determination finding him guilty of making an unauthorized response to a signal of another agency, and the penalty of suspension from duty for 15 days without pay. The Article 78 petition, transferred to the Appellate Division, First Department by order of transfer entered March 13, 1984, alleged that the disciplinary finding and penalty were invalid, partly because they exemplified a pattern of harassment and retaliation against McAllan by HHC and EMS, and were designed to punish him and deter him from his public criticisms of them. By order entered February 7, 1985, the Appellate Division, First Department unanimously confirmed both the determination and penalty imposed. McAllan v. Brezenoff, 108 AD2d 1103 (1st Dept., 1985).

In March 1985, McAllan moved for reargument, claiming that he had recently obtained additional evidence (partly through

his discovery in this federal action), which conclusively demonstrated that the challenged disciplinary proceeding was an example of HHC/EMS's continued harassment and retaliation against him. Among the facts he cited as evidence of the existence of the alleged pattern of harassment and retaliation were: HHC Vice-President Brantley had been quoted as calling him a "dissident" shortly after he filed the state court lawsuit in 1983; HHC had used Lincoln Hospital police against him during his union election campaign in 1981; EMS Director Kerr had brought disciplinary charges against him in 1983 after learning that McAllan had brought union charges against the Captain involved in the Lincoln Hospital incident. These same specific factual allegations were contained in the District Court complaint in this action, in ¶43(a), (d) and (f). On April 9, 1985, the Appellate Division, First Department

denied McAllan's motion to reargue in its entirety.

In 1984, McAllan was charged with misconduct for giving an unauthorized interview to the press. The charge was dismissed at the Informal Conference, because the Labor Relations officer concluded that McAllan had not intended to violate the patient confidentiality requirement of the Executive Order under which he was charged. That Executive Order was determined to be susceptible of misinterpretation, and was subsequently withdrawn and replaced with a more clearly-worded directive.

Early in the 1980s, HHC instituted a payroll deduction known as the "heat days" deduction. McAllan and others filed a grievance to preclude it, but lost. McAllan alleged in his complaint that the resulting payroll deductions were known as "McAllan

days" as part of HHC's campaign to denigrate him. EMS Labor Relations Director William M. Leask denied that he or anybody else at HHC or EMS has ever used such a characterization.

Before McAllan stayed his other OCB petitions in 1985, OCB had already decided two of McAllan's petitions that are somewhat related to the incidents alleged in this action. In Decision B-3-84, OCB found that in 1982, HHC had not taken any improper action nor had it taken any proper action from an improper motive, in its investigation of the charges of unauthorized response on which McAllan was eventually disciplined. Further, OCB found that HHC's actions could not have wrongly influenced the 1982 union election against McAllan. In Decision B-26-84, OCB found that the parent union and its representative for McAllan's local had not acted improperly nor infringed McAllan's

rights in disclosing a letter by EMS Director Kerr that characterized McAllan as a "disruptive employee," even though the disclosure was made during an election campaign period in 1981.

In sum, McAllan has not suffered any adverse personnel action, other than the single 15-day suspension that resulted from his own documented misconduct. That determination and penalty were upheld upon full judicial review, over McAllan's strenuously pressed claim that they were improperly motivated by the desire to retaliate against him. Nor has he been injured by having been required to respond to several charges of lesser misconduct, as none of those charges resulted in any disciplinary penalties, and the pre-disciplinary notices of counseling or reprimand that resulted have had no effect whatsoever on any subsequent personnel

action. McAllan has not incurred out-of-pocket expenses, either for the time spent at the pre-disciplinary sessions, Informal Conferences, or disciplinary hearings (since EMS's practice is to permit employees to attend such meetings on work time, without loss of pay or leave time), or for legal representation, which, where permitted, is provided without charge by the union if the employee so desires.

On or about November 13, 1986, McAllan served a District Court summons and amended complaint against the City of New York and various of its officials, which referred to a class action and asserted three causes of action alleging violations of the Civil Service Law and misuse of provisional appointments (first cause of action); claims that McAllan and others were harassed, punished and retaliated against for exercising their First Amendment rights

(second cause of action); and a violation of the Fair Labor Standards Act (third cause of action). During the extended history of this litigation, all claims except the second cause of action in the amended complaint have been withdrawn or disposed of, and the class action is no longer an issue in this case.

On or about May 4, 1990, respondents moved for summary judgment on the remaining claims asserted in the second cause of action, on the grounds that, as a matter of law: (1) McAllan's claim of retaliation and harassment for the exercise of his First Amendment rights was barred by res judicata and/or collateral estoppel; (2) McAllan failed to state any claim for defamation; and (3) McAllan failed to state a claim for retaliation because he did not sustain any injury proximately caused by any alleged wrongful acts of defendants.

By opinion and order dated December 17, 1990, the United States District Court for the Southern District of New York (GRIESA, U.S.D.J.) dismissed the second, and only remaining, cause of action in the amended complaint, thereby terminating the entire action (A6-A14).[1] The Court noted that the gravamen of the second cause of action was that HHC and EMS had made a concerted effort to chill McAllan's exercise of his right to free speech by retaliating against him for making public statements critical of EMS and HHC, and for challenging HHC's labor management practices and EMS's employment examination practices and job-title structure. After reviewing the relevant allegations of the

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[1] Numbers in parentheses preceded by the letter "A" refer to pages in petitioner's Appendix annexed to the Petition for A Writ of Certiorari.

amended complaint set forth in ¶43, and respondents' responses to the allegations, the District Court noted that the responses to such claims were in fact fully supported by the record. With respect to ¶43(a), 43(b), 43(c), 43(d), 43(e), 43(g), 43(h), and 43(i), the Court observed that McAllan had suffered no injury which could be the basis of a damage award, as a result of the actions alleged. With regard to ¶43(f), the Court noted that McAllan had challenged, in an Article 78 proceeding in December 1983, the 15-day suspension without pay, imposed after a full evidentiary hearing, for the charge of improper response to an assignment, which disciplinary action was confirmed by the Appellate Division, First Department.

The District Court held that the allegation in ¶43(f) of the amended complaint was barred under the doctrine of collateral

estoppel (A12). The Court further ruled that the other allegations in ¶43 had to be dismissed, as they were "entirely ephemeral" and without any "indication of any legally cognizable injury" (A13). The Court concluded that McAllan's various public criticisms of his employer proceed uninhibited; except for the mild sanction of the 15-day suspension without pay, as alleged in ¶43(f), there has been no actual adverse employment action against him; and he was offered a promotion in 1984, which he declined to accept. The District Court thereupon dismissed the second, and only remaining, cause of action in the amended complaint (A13).

By order filed July 29, 1991, the United States Court of Appeals for the Second Circuit affirmed the District Court's December 17, 1990 opinion, substantially for the reasons stated therein (A3-A5). The

Second Circuit Court of Appeals added that "[t]he sole adverse employment action against appellant that is not barred by collateral estoppel involves a reprimand," and concluded that nothing in McAllan's "papers indicates that this act had any concrete negative effect upon his employment status" (A4).

By order filed November 4, 1991, the Second Circuit Court of Appeals denied McAllan's petition for rehearing (A1-A2).

REASONS FOR DENYING THE WRIT

Petitioner has failed to set forth any important, special or compelling reason for granting his petition for a writ of certiorari. As in the Courts below, he has wholly failed to demonstrate any legally cognizable injury or violation of his First Amendment rights. The Courts below correctly determined that any claims not barred by collateral estoppel resulted in no concrete negative effect upon

his employment status, and no actual adverse employment action against him.

The District Court properly determined that the allegation in Complaint ¶43(f), in which McAllan alleged that he was charged with improper response to an assignment, as retaliation for expressing his First Amendment rights in filing charges against certain union officers, was barred by collateral estoppel. That charge arose out of the May 23, 1982 incident, as a result of which an informal conference was held in September, 1982; formal charges were served in February, 1983; a full evidentiary hearing was held on May 10, 24, and July 10, 1983; a report and recommendation (for a finding on one charge and penalty of a 15-day suspension without pay) was issued on August 15, 1983 and accepted by EMS Executive Director Kerr by letter dated August 26, 1983; McAllan brought an Article

78 proceeding in State court, challenging the finding and penalty; and the proceeding was transferred to the Appellate Division, First Department, which confirmed the finding and penalty on February 7, 1985. McAllan v. Brezenoff, 108 AD2d 1103 (1st Dept., 1985). In his State court Article 78 verified petition, verified reply, Appellate Division brief, reply brief, and motion for reargument, McAllan consistently alleged that this disciplinary determination was invalid and merely an example of the same alleged pattern and campaign of harassment and retaliation for his outspoken criticisms of management and EMS ambulance safety standards. Thus, McAllan's claim in ¶43(f) that the disciplinary proceedings and penalty were unfounded or otherwise improperly motivated by harassment and retaliation has been fully litigated and reviewed in state court, and decided adversely to him. The

issue thus may not be relitigated in this subsequent federal action. See, e.g., Migra v. Warren City School District, 465 US 75, 85 (1984) (state court judgment has same preclusive effect in federal court as it would have in state courts); Murphy v. Gallagher, 761 F2d 878, 881-82 (2d Cir. 1985); Kendall v. Avon Products, Inc., 711 F.Supp. 1178, 1182 (SDNY 1989). McAllan is precluded by collateral estoppel from asserting any issues concerning the validity of the disciplinary proceeding, finding, and penalty, which have already been raised, fully litigated, and upheld in McAllan v. Brezenoff, supra, and the same issue asserted in ¶43(f) of the amended complaint is thus barred from further consideration in this action.

McAllan has also litigated his basic claim that HHC and EMS have harassed and retaliated against him for his criticisms of their management, in proceedings before the

City's Office of Collective Bargaining ("OCB"). During the early 1980's, he filed a number of Improper Practice Petitions containing this basic claim, each one alleging a different factual scenario. Two of the petitions which involve allegations related to those asserted here, OCB Decisions B-3-84 and B-26-84 (involving events alleged in Complaint ¶43(b) and (f)), were decided by OCB in 1984, both adversely to McAllan. Although he could have sought judicial review of those decisions through an Article 78 petition, he chose not to do so, and the OCB Decisions may thus be regarded as final. In Decision B-3-84, OCB denied McAllan's claim that "EMS upper management" had improperly attempted to sway the 1982 union local election against McAllan by its investigation of the incident that ultimately led to the discipline that was upheld in McAllan v. Brezenoff (Complaint ¶43(f)).

After careful review, OCB found "no evidence either of improper acts or of proper acts improperly motivated." In Decision B-26-84, in which McAllan had alleged that the representative of the parent union had tried to sway the local's membership against McAllan during the 1981 election by revealing to them that EMS Director Kerr had sent a letter characterizing McAllan as a "disruptive employee" (the same claim made in Complaint ¶43(b)), OCB found that the record failed to show how these statements interfered with, restrained, or coerced McAllan in connection with his exercise of protected rights, and denied the petition. These decisions by an administrative tribunal may be given collateral estoppel effect as to the legal issues and facts decided. The final decision of an administrative tribunal may be entitled to res judicata effect against a plaintiff who attempts to raise the same claims in a

subsequent federal action. See, e.g., Kirkland v. City of Peekskill, 828 F2d 104, 110 (2d Cir. 1987) (barring relitigation of claims decided adversely to plaintiff in a State Division of Human Rights proceeding).

The Courts below also correctly held that the remaining allegations in Complaint ¶43 had to be dismissed, as they were entirely ephemeral and did not indicate any legally cognizable injury. To establish a claim for unlawful retaliation, the employee must demonstrate that (1) he was engaged in a protected activity; (2) the employer was aware of that activity; (3) some adverse employment action occurred to the employee; and (4) a causal connection existed between the protected activity and the adverse action. Hollander v. American Cyanamid Co., 895 F2d 80, 85 (2d Cir. 1990). As the District Court and Court of Appeals concluded, McAllan has wholly failed to

demonstrate that he incurred any actual injury from the acts complained of in his complaint, sufficient to raise a Constitutional claim.

In order to raise a claim upon which relief can be granted that respondents violated his Constitutional right to free speech without retaliation, McAllan would have to show that respondents did something that caused him some injury. Without an actual injury, no plaintiff can support a claim. See, e.g., Warth v. Seldin, 422 US 490, 515 (1975). Here, all that McAllan alleges is that respondents "engaged in administrative and other tactics designed either to discredit or to retaliate against McAllan..." Complaint ¶43.

In Complaint ¶43(a), McAllan referred to an incident at Lincoln Hospital in February 1981. An Informal Conference conducted by William M. Leask, EMS Director

of Labor Relations, was held on June 19, 1981 about this incident. After hearing from witnesses in support of the complaints of "Conduct Unbecoming an E.M.S. Employee" and "Loitering," and from McAllan and other witnesses in opposition, Mr. Leask determined that the charges were founded and deserving of a reprimand. McAllan did not continue with the grievance procedure, and HHC did not bring further Rule 7.5 charges, so the Informal Conference was the end of this process. As the District Court noted, there is no indication that McAllan was actually denied access to EMS facilities in any way that prevented any activities by him. He also claimed he was "threatened with arrest," but no arrest was actually effectuated. Finally, McAllan could have filed a grievance from the reprimand, but failed to do so.

Columbus Education Association v. Columbus City School District, 623 F2d 1155, 1159, 1160 (6th Cir. 1980) (Writ Petition at 22) is inapposite, since in that case, there was an undisputed connection between the plaintiff's advocacy as a union spokesperson of a fellow teacher's complaint, and the letter reprimanding him for "unacceptable conduct" in response to his representation of the fellow employee. The plaintiff's zealous advocacy was found to be a substantial factor in issuing the letter of reprimand, and the defendants had failed to offer any legitimate rationale for the reprimand. See also Yoggerst v. Stewart, 623 F2d 35, 40-41 (7th Cir. 1980) (Writ Petition at 21) (undisputed connection between the plaintiff's casual, apparently derogatory remark about director of State agency, and oral and written reprimand and denial of grievance; employment action against plaintiff

was found to be "a ponderously inappropriate reaction to a casual and innocuous comment"). By contrast, in the case at bar, McAllan was reprimanded for conduct unbecoming an EMS employee, due to disorderly and disruptive behavior, and loitering. McAllan does not demonstrate or present any proof that the letter of reprimand was unfounded, connected to his outspoken criticisms of EMS management, or issued to retaliate against his constitutionally protected, First Amendment rights to freedom of speech or association. Nor has he alleged or proven any adverse impact, or come forward with any evidence of injury based upon the reprimand. As the Court of Appeals observed, nothing in McAllan's papers (or, for that matter, in the instant Writ Petition) indicates that this reprimand "had any concrete negative effect upon his employment status" (A4). Nor does he

demonstrate that the reprimand was unfounded, unjustified, or based upon a mere "trivial episode," as in Yoggerst v. Stewart, supra.

As to Complaint ¶43(b), in which McAllan alleged that Kerr wrote a letter in February 1981 to a union official calling McAllan "disruptive," and that the letter was intended to hurt him in his campaign to become union president (the same event which is the subject of OCB Decision B-26-84), there was no indication of any actual injury to McAllan.

As to Complaint ¶43(c), wherein McAllan alleged that HHC withheld exculpatory evidence at certain OCB hearings relating to the Lincoln Hospital incidents, no adverse determination had ever been rendered in those hearings or on the merits of the OCB petition. McAllan requested in 1985 that the

OCB proceedings be held in abeyance pending the outcome of this federal action.

As to Complaint ¶43(d), McAllan's allegation that an HHC vice-president was quoted in a union newspaper as labelling him a dissident after a certain lawsuit was filed against HHC and EMS, no injury whatsoever resulted to McAllan as a result of the alleged quotation.

As to Complaint ¶43(e), McAllan referred to a 1983 complaint that he did not give proper signals to a dispatcher, and claimed that defendants "prevented an investigation" that might have cleared him of the charge. McAllan's immediate supervisor counseled him about the violation, and McAllan wrote a rebuttal comment on the Notice of Counseling. Thus, all that occurred was actually pre-disciplinary "counseling," without penalty, further impact, or any injury to McAllan.

As to Complaint ¶43(g), McAllan alleged that he was charged in 1984 with "misconduct" following a press interview. This charge, however, was dismissed after the preliminary Informal Conference, and no injury to McAllan resulted. The Executive Order under which this charge was brought was later found to be susceptible of misreading, and has since been withdrawn and substituted with a more clearly worded directive.

As to Complaint ¶43(h), McAllan referred to a payroll deduction first imposed in 1983 and commonly known as the "heat days" deduction. As he correctly alleged, after he and others grieved the determination, HHC's position was upheld, and the deduction of annual leave time (or its cash equivalent) was permitted. Mr. Leask was unaware that the deduction had ever been referred to by anyone at EMS or

HHC as the "McAllan days," and in any event, McAllan alleged no injury whatsoever as a result thereof.

As to Complaint ¶43(i), in which McAllan alleged that one of the defendants "publicly disparaged" him about newspaper leaks concerning EMS, there is likewise no indication of any injury whatsoever to McAllan as a result of this alleged disparagement.

Thus, the only actual disciplinary penalty ever imposed on McAllan was the 15-day suspension without pay, arising out of the 1982 misconduct, which finding and penalty were conclusively upheld by the Appellate Division, First Department on February 7, 1985. No charge that can be alleged to be retaliatory has ever resulted in any adverse personnel action, or even any recommendation for such action. Only the charge referred to in ¶43(f) reached a formal

disciplinary hearing and imposition of a disciplinary penalty that was judicially upheld. The other charges have not resulted in any disciplinary action, adverse employment effect, or in McAllan being fired, demoted, suspended, transferred against his will, denied promotion, or even threatened with any such consequence. Mere speculation that at some future time, those of the pre-disciplinary complaints that still exist in his file might have some injurious effect is insufficient to state a claim. The injury must be real and immediate, rather than conjectural or hypothetical. See O'Shea v. Littleton, 414 US 488, 494 (1974).

Not only has there been no unjustified adverse personnel action against McAllan, but in fact, he was offered a promotion during the very period that he alleged defendants were engaging in harassment and retaliation against him. McAllan turned down

the offered promotion to the title of Supervising Emergency Medical Service Specialist, claiming in his July 8, 1984 letter that because of his pending litigation, he would find it difficult to function in a supervisory position. Affirmatively choosing to continue to perceive and present himself as a victim of his employers' retaliation and harassment, rather than to accept promotion and move forward with his career, does not support a claim of retaliation injury.

Nor has McAllan been injured by the mere fact that he was summoned to explain his conduct at several counseling sessions or Informal Conferences. He did not lose any pay on account of attendance at these discussions, which EMS employees are permitted to attend on working time. He did not have to incur any expense for defense counsel, since his union would provide

representation at no charge if requested to do so.

McAllan has consistently been treated by EMS even-handedly and like any other employee with respect to all personnel and disciplinary decisions. He has not been the target of any campaign of harassment or retaliation by any of the defendants. As the District Court noted, McAllan's various public criticisms of his employer continue unimpeded and uninhibited, and except for the mild sanction alleged in Complaint ¶43(f), there has been no actual adverse employment action against him. To the contrary, he was offered a promotion in 1984, but declined it. No case has been found in which a claim of retaliation for the exercise of constitutionally protected rights has been sustained without any proof of any actual injury having been incurred, rather than mere speculation that something might later occur.

CONCLUSION

It is respectfully submitted that petitioner has failed to sustain his burden of establishing that there are special and important reasons why the Writ of Certiorari should be granted. As the decisions of the Second Circuit and the District Court correctly apply well-settled legal principles to the facts of this particular case, they do not involve any important issues of alleged First Amendment violations which have not been, but should be, settled by this Court. Accordingly, petitioner has not demonstrated any reason why this Court should exercise its sound judicial discretion to entertain this

case. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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